



PTO/SB/21 (04-07)

Approved for use through 09/30/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

24

Application Number

09/920,961

Filing Date

08/03/2001

First Named Inventor

Edwin Lyda

Art Unit

2623

Examiner Name

Sheleheda, James R.

Attorney Docket Number

LYDA-01

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, <u>Reply Brief</u>)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Certified Copy of Priority Document(s)	Remarks	
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Ahnelin and Gaskin		
Signature	<i>Mary J. Gaskin</i>		
Printed name	Mary J. Gaskin		
Date	September 21, 2007	Reg. No.	30,381

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	<i>Mary J. Gaskin</i>		
Typed or printed name	Mary J. Gaskin	Date	9/21/07

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



TABLE OF CONTENTS

	<u>Page</u>
I. STATUS OF CLAIMS	1
II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	1
III. ARGUMENT	2
A. Rejection Under 35 U.S.C. §112	2
B. Rejection Under 35 U.S.C. §102(b) as Being Anticipated	2
by Ferris <i>et al.</i>	
C. Rejection Under 35 U.S.C. §103(a) as Being Unpatentable ...	5
Over Ferris <i>et al.</i> in View of Dobson	
D. Rejection Under 35 U.S.C. §103 as Being Obvious Over:	5
Ferris <i>et al.</i>	
E. Rejection Under 35 U.S.C. §103(a) as Being Unpatentable ...	5
Over Ferris <i>et al.</i> In View of Yoshinoba	
F. Rejection Under 35 U.S.C. §301(a) as Unpatentable	5
Over Ferris <i>et al.</i> In View of Lewis	
G. Conclusion	6
IV. ADDITIONAL MATTERS	6
V. APPENDIX	
A. Request For Replacing Examiner; Expediting Appeal	8
B. Interview Summary (Examiner's)	9
C. Interview Summary (Appellant's)	10



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

In re: Application Serial No.: 09/920,961

Filing Date: 08/03/2001

First Named Inventor: Edwin Lyda

Group Art Unit: 2623

Examiner's Name: Sheleheda, James R.

Attorney Docket No.: LYDA-01

APPELLANT EDWIN LYDA'S REPLY BRIEF



I. STATUS OF CLAIMS

Claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 stand rejected.

Claims 8 through 12, 16, and 22 have been cancelled.

Appellant is appealing the rejections of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25.

The text of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 is set out in the Appendix to appellant's Main Brief.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1 through 7, 13 through 15, 17 through 22, and 23 through 25 fail to comply with the enablement requirement of 35 U.S.C. §112 – Grounds were withdrawn by Examiner.
- B. Whether claims 1, 2, 13 through 15, 17, 20, 21, and 23 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Ferris *et al.* (WO 99/04568).
- C. Whether claim 3 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over Ferris *et al.* (WO 99/04568 in view of Dobson U.S. 6,704,317).
- D. Whether claims 4, 5, 6, 18 and 24 are unpatentable under 35 U.S.C. §103(a) as being obvious over Ferris *et al.* (WO 99/04568).
- E. Whether claim 7 is unpatentable under 35 U.S.C. §103(a) as being unpatentable over Ferris *et al.* (WO 99/04568) in view of Yoshinoba *et al.* (U.S. 5,721,584).
- F. Whether claims 19 and 25 are unpatentable under 35 U.S.C. §103(a) as being unpatentable over Ferris *et al.* in view of Lewis *et al.* (U.S. 5,303,042).

III. ARGUMENT

(NOTE: In his answer, the Examiner restated the original Examiner's rejections exactly as set out in an office action dated November 2, 2006, repeating phrases parsed imprecisely and even including typographical errors. Appellant has already addressed those comments in his Main Brief which responded to that office action; therefore, the Argument section deals only with the Examiner's comments from page 12 through page 20 of his Answer.)

A. Rejection of claims 1-7, 13-15, and 23-25 Under 35 U.S.C. §112 as Failing to Comply With the Enablement Requirement

This ground of rejection has been withdrawn by the Examiner.

B. Rejection Under 35 U.S.C. §102(b) As Being Anticipated by Ferris *et al.*

The Examiner responded to Appellant's arguments that Ferris differs from his invention because the Ferris device must receive display data before a user may respond and the user is limited to "responding" to the data on the display. The Examiner's position appears to be based on his belief that Appellant's "input mechanism" is merely a key-pad for inputting data (he cites page 8, lines 1-4). He then states that Ferris' keypad operates in the same manner as Appellant's keypad, receiving no signals eliciting a response by the user.

Appellant draws the Examiner's attention to the fact that the user input mechanism encompasses more than simply the various keys on the keypad; it describes the unit providing input capability. Ferris' input mechanism differs because it must incorporate a display to which the user enters his responses (See Fig. 1, Figs. 2A - 2H).

(Appellant acknowledges that some confusion has resulted from the language of claims 2, 3, 4 and 5, which, as he pointed out, contains the following clause: "the input mechanism is selected from the group consisting of a key pad and voice recognition apparatus." Due to the placement of the clause "the mechanism operating without receiving signals eliciting a response by the user," the claims should read "the input mechanism comprises a key pad or voice recognition apparatus," which would properly indicate that the input mechanism does not consist exclusively of a keypad or voice recognition apparatus.)

The Examiner's answer then suggests that, to read over Ferris, the claim should read "the response device operating without receiving signals eliciting a response by the user" (Examiner's Answer, p. 14, ll. 1-2). On September 18, 2007, Appellant's attorney spoke with the Examiner regarding the meaning of this statement. If entry of such an amendment would put the application in condition for allowance, Appellant would request that the Examiner withdraw the final rejection, reopen prosecution, permit Appellant to amend the claims accordingly, and then issue an allowance.¹

¹Appellant would then propose the following amendment to the independent claims (only amended portions are shown:

1. An electronic response device other than a personal computer, the response device operating without receiving signals, eliciting a response by a user, the response device configured to allow [[a]] the user to send data over a standard communication system in response to a program received apart from the response device, the response device comprising:

a user input mechanism for entry of user input and responses, ~~the mechanism operating without receiving signals eliciting a response by the user;~~

....

13. ... providing a ~~user input~~ response device other than a personal computer, the device operating without receiving signals eliciting a response by the audience member, the device having input capabilities;

having the audience member input the program identifier code into the ~~user input~~ response device;

The Examiner has suggested that the Ferris device allows a user to respond to a program received apart from the device because the user can purchase products as a result of offers synchronized with a television broadcast. However, the user of the Ferris device is still not able to “respond” to the program itself, which is the broadcast received apart from the device.

The Examiner also argues that Ferris discloses entering a program identifier code. However, Appellant’s claim requires a user to input a program identifier code, for the program received apart from the device. The two examples cited by the Examiner refer to having a user press the “BUY” or “INFO” button in response to data displayed on the device, in order to initiate a purchase or to get further information about a product, or to have a user track a package. None of these instances meet the claim limitation, which requires input of a program identifier code for a program received apart from the response device.

The Examiner’s discussion of the claim terms “correlated” and “having the presenter of the program respond to the audience member” involve equally tortured examples.

Appellant’s invention, either as presently claimed or, if the claims are amended

-
- having the audience member input responses into the ~~user input~~ response device;
....
20.
providing a ~~user input response~~ device other than a personal computer, the device ~~generating~~
operating without receiving signals eliciting a response by a user, the device having input
capabilities;
- having an audience member input the program identifier code into the ~~user input~~ response device;
having the audience member input responses into the ~~user input~~ response device;
....

according to the Examiner's suggestion, should be allowable over Ferris.

- C. Rejection of Claim 3 Under 35 U.S.C. §103(a) As Being Obvious Over Ferris *et al.* WO99/04568 in view of Dobson (U.S. 6,704,317)

Appellant reiterates the arguments made in the Main Brief.

- D. Rejection Under 35 U.S.C. §103(a) As Being Obvious Over Ferris *et al.* (WO99/04568)

Appellant would point out that nothing in Ferris discloses having a “transmitter configured to call telephone numbers each of the telephone numbers having been associated with a particular response to the program” (italics mine). The example from Ferris describes forwarding credit card details, held in the user database, to a sponsoring party to formulate a financial transaction. Because that example has no connection with utilizing telephone numbers much less different numbers depending on the response, the Examiner modified Ferris to use POTS. The combination is not suggested by Ferris, and the example used does not make the present invention obvious

- E. Rejection of Claim 7 Under 35 U.S.C. §103(a) As Being Unpatentable Over Ferris *et al.* (WO99/04568 in View of Yoshinoba *et al* (U.S. 5,721,584)

See discussions above, related to claim 1.

- F. Rejection of Claims 19 and 25 Under 35 U.S.C. §103(a) As Unpatentable Over Ferris *et al* In View of Lewis *et al* (U.S. 5,303,042)

The Examiner stated Ferris discloses” having an audience member log in to a remote computer system” However, the example he cites is using a PIN to unlock a handset, and he again refers to the phrase “logging the interaction in a user database,” which, as

appellant has previously pointed out, refers simply to tracking user actions. The combination relied on by the Examiner has been discussed, and discounted, in Appellant's Main Brief.

G. Conclusion

For the foregoing reasons, Appellant submits that the Examiner's rejection of claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25 is in error and that it should be reversed. Appellant hereby requests that the Board withdraw the Examiner's rejection and allow claims 1 through 7, 13 through 15, 17 through 21, and 23 through 25.

IV. ADDITIONAL MATTERS

Appellant would like to have the Board take notice of some of the filings in this case related to several baffling events that have occurred.

In a Request for Replacing Examiner; Expediting Appeal to the Director, which was filed on April 6, 2007, Appellant's attorney laid out some of these events. (See Appendix A). Appellant received no response to the Request, and the Appeal was not expedited.

After Appellant's attorney called the Examiner, well after the Answer was due, Mr. Chris Kelley called Appellant's attorney. The Interview Summary filed by Chris Kelley (See Appendix B) indicates that the phone call merely related to the Request. Appellant's attorney's Interview Summary (See Appendix C) states her recollection of the conversation, which differs from Mr. Kelley's.

Subsequently, Appellant's attorney attempted to call Director Wanda Walker to discuss the conflicting information in the two Interview Summaries on file. Ms. Allyson Despertt indicated that Director Walker would be returning the call. When no call was

forthcoming, Appellant's attorney called Ms. Desperdt again and was informed Mr. James Brody would be returning the call to discuss the matter. No call was ever received from either Director Walker or Mr. Brody.

Respectfully submitted:

Sept. 21, 2007
Date

Mary J. Gaskin
Mary J. Gaskin
Patent Attorney
Registration No. 30,381
2170 Buckthorne Pl., Suite 220
The Woodlands, Texas 77380
Phone: (281)363-9121
Fax: (281)363-4066

Attorney for Appellant, Edwin Lyda

cc: Mr. Edwin Lyda

APPENDIX

A. Request For Replacing Examiner; Expediting Appeal

APPENDIX

B. Interview Summary (Examiner's)

Interview Summary	Application No.	Applicant(s)	
	09/920,961	LYDA, EDWIN	
	Examiner	Art Unit	
	Chris Kelley	2623	

All participants (applicant, applicant's representative, PTO personnel):

(1) Chris Kelley. (3)_____.

(2) Mary Gaskin. (4)_____.

Date of Interview: 20 July 2007.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.
If Yes, brief description: _____.

Claim(s) discussed: _____.

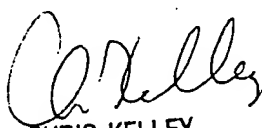
Identification of prior art discussed: _____.

Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Ms Gaskin was informed that the letter to the director on 4/6/07 is being treated as a petition to remove the examiner. This is dismissed as moot since the examiner has been changed.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.


 CHRIS KELLEY
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 2600

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

APPENDIX

C. Interview Summary (Appellant's)

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

3

Application Number

09/920,961

Filing Date

08/03/2001

First Named Inventor

Edwin Lyda

Art Unit

2623

Examiner Name

Sheleheda, James R.

Attorney Docket Number

LYDA-01

ENCLOSURES (Check all that apply)☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☐

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐Reply to Missing Parts/
Incomplete Application☐Reply to Missing Parts
under 37 CFR 1.52 or 1.53☐

Drawing(s)

☐

Licensing-related Papers

☐

Petition

☐Petition to Convert to a
Provisional Application☐Power of Attorney, Revocation
Change of Correspondence Address☐

Terminal Disclaimer

☐

Request for Refund

☐

CD, Number of CD(s) _____

☐

Landscape Table on CD

☐

After Allowance Communication to TC

☐Appeal Communication to Board
of Appeals and Interferences☐Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)☐

Proprietary Information

☐

Status Letter

☒Other Enclosure(s) (please identify
below):

Interview Summary

Remarks

ATTENTION: Please forward a copy to:

ANDREW FAILE, DIRECTOR, ART UNIT 2623

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Annelin and Gaskin

Signature

Mary J. Gaskin

Printed name

Mary J. Gaskin

Date

Aug. 17, 2007

Reg. No.

30,381

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Mary J. Gaskin

Typed or printed name

Mary J. Gaskin

Date

Aug. 17, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

In re Application of: Edwin Lyda
Application No.: 09/920,961
Filed: 08/03/2001
For: Distance Learning System

Date: August 17, 2007
Group Art Unit: 2623
Examiner: Sheleheda, James R.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

INTERVIEW SUMMARY

All Participants:

1. Chris Kelley
2. Mary Gaskin

Date of Interview: July 20, 2007

Type: Telephonic

Exhibit shown or demonstration conducted: Not applicable


Claim(s) discussed: Not applicable

Identification of prior art discussed: Not applicable

Agreement with respect to the claims was was not reached.

CERTIFICATE OF TRANSMISSION (37 CFR 1.8a)

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, via Fax No. 571-273-8300, on August 17, 2007.



Mary J. Gaskin

Substance of Interview:

Prior to the telephone interview, I had left a message with Examiner Sheleheda requesting him to call me. Instead I received a call from Examiner Kelley. I inquired about the fact that I had not yet received the Examiner's Brief in response to Applicant's Appeal Brief, which had been filed in December 2006, and which was amended (for two minor issues) and re-filed on April 2, 2007. The information online showed that the brief had been forwarded to the Examiner in early May. At the very latest, the Examiner's Brief should have been sent to me by early July 2007. Examiner Kelley indicated I would receive the Examiner's Brief "by the end of the next week" (July 27). (In fact, the Examiner's Brief was not mailed until August 3, 2007). I expressed dissatisfaction that the Examiner's Brief would be late (once again), particularly in view of the fact that, on April 6, 2007, I had filed a Petition For Replacing Examiner; Expediting Appeal, directed to Andrew Faile's attention, to which I had received no reply. At that point, Examiner Kelley raised the fact that the Examiner had been changed; however, I indicated that I was aware of the fact that the previous examiner, Hai Tran, had been promoted to an SPE position outside the Art Unit, and that fact had necessitated the change, not my petition.

In his interview summary, the Examiner indicated that my petition had been dismissed (this is my first notice of that fact) as "moot since the examiner has been changed." However, he never addressed the fact that the petition had also requested that the appeal be expedited to as great an extent as possible in view of the lengthy delays associated with the case. Clearly, the appeal has NOT been expedited at all; as usual the Examiner's Brief was overdue when I finally received it.

Date: August 17, 2007

Respectfully submitted,



Mary J. Gaskin
Attorney for Applicant
Registration No. 30,381
2170 Buckthorne Pl., Suite 220
The Woodlands, TX 77380
Phone: (281) 363-9121
Fax: (281) 363-4066

TO: Auto-reply fax to 28136 066 COMPANY:

Auto-Reply Facsimile Transmission



TO:

Fax Sender at 2813634066

Fax Information

Date Received:

8/17/2007 7:17:52 PM [Eastern Daylight Time]

Total Pages:

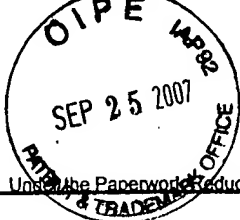
3 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b); 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
Cover
Page

=====>

08/17/2007 10:16 FAX 2813634066		ANNELIN & GASKIN		0001	
<p>Under the Patent and Trademark Act of 1992, no person is required to respond to a notice of information unless it contains a valid CDS contact number.</p> <p>Approved for use through 8/19/2007. OMB 0651-0031 U.S. Patent and Trademark Office U.S. DEPARTMENT OF COMMERCE</p>					
TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small> Total Number of Pages in This Submission: 3		Application Number: 09/920,961			
		Filing Date: 08/03/2001			
		First Named Inventor: Edwin Lyda			
		Art Unit: 2623			
		Examiner Name: Sheleheda, James R.			
		Attorney Docket Number: LYDA-01			
ENCLOSURES (Check all that apply)					
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavit/Declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD		<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (Please identify below): Interview Summary	
ATTENTION: Please forward a copy to: ANDREW FAILE, DIRECTOR, ART UNIT 2623					
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT					
Firm Name: Annelin and Gaskin					
Signature: <i>Mary J. Gaskin</i>					
Printed name: Mary J. Gaskin					
Date: Aug. 17, 2007		Reg. No.:		30,381	
CERTIFICATE OF TRANSMISSION/MAILING					
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:					
Signature: <i>Mary J. Gaskin</i>					
Typed or printed name: Mary J. Gaskin		Date: Aug. 17, 2007			
<small>This collection of information is required by 37 CFR 1.6. The information is required to obtain or retain a benefit by the public which is to be (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 2 hours to complete, including amount of time you require to complete this form and suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND PERS OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</small>					
<small>If you need assistance in completing this form, call 1-800-PTO-9196 and select option 2.</small>					
PAGE 1/3 RCV'D AT 8/17/2007 7:17:52 PM [Eastern Daylight Time] * SVR:USPTO-EF:RF 3/4 * DNS:2738300 * CSD:2813634066 * DURATION (mm:ss):08:52					



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

5

Application Number	09/920,961
Filing Date	08/03/2001
First Named Inventor	Edwin Lyda
Art Unit	2623
Examiner Name	Tran, Hai V.
Attorney Docket Number	LYDA-01

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Request For Replacing Examiner; Expediting Appeal
<div>Remarks</div> <p>ATTN: To Andrew Faile, Director, Art Unit 2623</p>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Annelin and Gaskin		
Signature	<i>Mary J. Gaskin</i>		
Printed name	Mary J. Gaskin		
Date	<i>April 6, 2007</i>	Reg. No.	30,381

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	<i>Mary J. Gaskin</i>		
Typed or printed name	Mary J. Gaskin	Date	4/6/07

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



In re Application of: Edwin Lyda

Application No.: 09/920,961

Filed: 08/03/2001

For: Distance Learning System

Date: April 6, 2007

Group Art Unit: 2623

Examiner: Tran, Hai V.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Andrew Faile, Director

REQUEST FOR REPLACING EXAMINER; EXPEDITING APPEAL

I am the attorney prosecuting the above-referenced application. As a member of the U.S. Patent Bar for over 25 years, I have always been able to work with Examiners in achieving fair results for my clients and the patent office. However, in view of the actions (or inactions) taken by the present Examiner, Hai V. Tran, I must request that this application be assigned to a different Examiner.

If you review the file history, you will understand my frustration. The most basic request, entry of a Power of Attorney, which was filed on March 24, 2005, along with an affidavit by Edwin Lyda, the inventor, was ignored for almost a year! After it was filed, Hai Tran sent at least three office actions to Mr. Lyda's previous attorneys. Each time I reminded him of the change, he failed to ensure that the Power of Attorney was entered. Finally, on March 3 and March 8, 2006, I called a supervisor, who personally made sure the document, which had been filed a year before, was entered. "Acceptance" of the power of attorney was mailed on March 9, 2006. Apparently, Hai Tran failed to understand

the importance of ensuring that USPTO correspondence was sent to the authorized representative, not to a firm that had no further business with the applicant.

Subsequent thereto, applicant filed a Notice of Appeal (3/22/06) and an Appeal Brief (4/27/06). The USPTO received the Appeal Brief on May 1, 2006, and on May 4, 2006 forwarded it to Hai Tran. More than two months later, on July 14, 2006, Hai Tran reopened prosecution, sending an office action which regurgitated his previous rejection (which had precipitated the appeal). I was unable to discern a basis for reopening prosecution since no new references were directed at the independent claims. I called Christopher Kelley, Hai Tran's supervisor, who indicated prosecution was reopened based on the need for a shored-up rejection to Claim 3, a dependent claim. In our conversation, I discussed the differences between the present claims and the Ferris reference. He suggested I fax him proposed claims which would further distinguish over Ferris, and I did so. He left a telephone message indicating it appeared we had claimed over Ferris, and he suggested I reply to the rejection with the amended claims. Over two months later, I received Hai Tran's rejection, once again citing Ferris.

I immediately reopened the appeal by filing a Notice of Appeal, followed by an Appeal Brief, which was received by the USPTO on December 4, 2006. For some reason, it was not forwarded to the Examiner until January 9, 2007. Thereafter, another two months passed without a reply. I finally telephoned Christopher Kelley to find out why Hai Tran had not filed a timely response. He directed me to Scott Beliveau, Hai Tran's acting supervisor. Mr. Beliveau had been present at an appeal conference held the week before, and he indicated that the Appeal Brief I had filed almost 3½ months earlier had been found

to be defective for two reasons:

- (1) I had sometimes used the term "applicant" instead of "appellant"; and
- (2) I had corrected a typographical error in one of the claims.

Needless to say, I was quite chagrined that I would need to file an amended brief and would have to wait several more months for the Examiner's reply (or for some other delay tactic to occur). I was also at a loss to understand why I had not been so informed much sooner; the "defects" should have been readily ascertained when Hai Tran received the brief at the beginning of January, and I could have filed a corrected brief then.

The last straw came when I received the actual Notification of Non-Compliant Appeal Brief, signed by Hai Tran. He referred to the two items mentioned by Mr. Beliveau, but he had also checked Box 4 and stated under Box 10:

"Limitation in independent claims 1, 13, 20, i.e., the mechanism operating without receiving signals eliciting a response by the user, does not correctly refers to Appellant's specification pages and line number because the referred pages and lines do not support that limitation."

Since my brief already contained the information required by Box 4, I called Mr. Beliveau, who, after reviewing the Notice, indicated that I should ignore the checkmark by Box 4 and the language under 10 about the limitations. Apparently, Hai Tran had added that requirement without discussing it with his supervisors, thinking I would not be able to file an amended brief that would comply (since I had already provided material which I viewed as satisfying the requirement).

I have no doubt that Hai Tran is doing everything he can to delay the prosecution and appeal of the present application. His office actions always contain language that is difficult to comprehend; he displays less than adequate skill in communicating in English.

His arguments are convoluted and indicate that he does not understand the claims. Both the inventor and I feel that, if someone other than Hai Tran were to read the specification, the Ferris reference, and our Appeal Brief, the claims would be found to be allowable over Ferris. The inventor is becoming increasingly disheartened because no one in the patent office (other than Hai Tran) has read the documents and, consequently, no one understands the need for and usefulness of the technology involved. Under 35 U.S.C. §§101-103, he has a right to have a patent granted (the Ferris reference has no application whatsoever to his claims). I have never before requested that an Examiner be removed from an application I've been handling. However, the events that have transpired require me to do so.

Further, in view of the lengthy delays associated with this case, I request that the appeal be expedited, to the greatest extent feasible.

Please contact me if you have any questions or comments.

Date: April 6, 2007

Respectfully submitted,

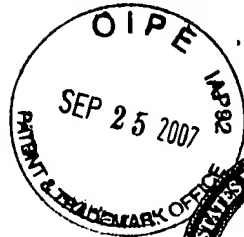


Mary J. Gaskin
Attorney for Applicant
Registration No. 30,381
2170 Buckthorne Pl., Suite 220
The Woodlands, TX 77380
Phone: (281) 363-9121
Fax: (281) 363-4066

cc: Mr. Scott Beliveau
Mr. Edwin Lyda

C:\A&G\Patents\Lyda\rqexaminer

TO: Auto-reply fax to 281363 6 COMPANY:



Auto-Reply Facsimile Transmission

TO:

Fax Sender at 2813634066

Fax Information

Date Received:

4/6/2007 4:47:17 PM [Eastern Daylight Time]

Total Pages:

5 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
Cover
Page

=====>

04/06/2007 16:48 FAX 2813634066		ANNELIN & GASKIN		001	
<p>PROCESSED (06-06) Approved for use through 03/31/2007. One 001-001 U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE Under the Paperwork Reduction Act of 1995, no actions are required to respond to a collection of information unless it displays a valid OMB control number.</p>					
TRANSMITTAL FORM <small>(To be used for all correspondence after initial filing)</small> Total Number of Pages in This Submission: 5		Application Number: 09/920,961 Filing Date: 08/03/2001 First Named Inventor: Edwin Lyda Art Unit: 2623 Examiner Name: Tran, Hai V. Attorney Docket Number: LYDA-01			
		ENCLOSURES (Check all that apply)			
		<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavit/Declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.82 or 1.83			
		<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) <input type="checkbox"/> Landscape Table on CD <input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Request For Replacing Examiner; Expediting Appeal			
		Remarks: ATTN: To Andrew Fails, Director, Art Unit 2623			
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT					
Firm Name		Annelin and Gaskin			
Signature		<i>Mary J. Gaskin</i>			
Printed name		Mary J. Gaskin			
Date		April 6, 2007		Reg. No.	30,381
CERTIFICATE OF TRANSMISSION/MAILING					
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:					
Signature		<i>Mary J. Gaskin</i>			
Typed or printed name		Mary J. Gaskin		Date	4/6/07
<small>This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public using it to the (and by the USPTO to process) an application. Confidentiality is provided by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND PERS OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.</small>					
<small>If you need assistance in completing this form, call 1-800-PTO-6199 and select option 3.</small>					
PAGE 115 * RCVD AT 4/6/2007 4:47:17 PM [Eastern Daylight Time] * SVR:USPTO-EPXRF-3411 * DMS:2732300 * CSID:2813634066 * DURATION (mm:ss):02:40					